

### REMARKS

In response to the non-final Office Action of September 8, 2009, applicants ask that all claims be allowed in view of the amendment to the claims and the following remarks. Claims 1-7, 9, 10, 13-17, 19-22, 27-34, 39-45, 47, 48, 51-55, 57-60, and 65-71 are pending in the application, of which claims 1, 22, 31, 34, 39, 60, and 69 are independent. Claim 34 has been withdrawn from consideration, leaving claims 1-7, 9, 10, 13-17, 19-22, 27-33, 39-45, 47, 48, 51-55, 57-60, and 65-71 presented for examination.

### **Claim Objections**

The Office Action objects to claims 39, 47, and 48 because of informalities. Specifically, the Office Action notes: “[t]here is a typo error where it mentions that claim 39 is cancel[ed]. Claims 47 and 48 appear dependent from a cancel[ed] claim.” Non-final Office Action of September 8, 2009 at page 2, lines 11-12. Applicants have fixed the typographical error suggesting that claim 39 has been canceled, and applicants have amended claims 47 and 48 to correct their dependencies. Accordingly, applicants request reconsideration and withdrawal of the objection to claims 39, 47, and 48.

### **Claim Rejections Under 35 U.S.C. § 101**

Claims 1-7, 9, 10, 13-17, 19-22, 27-33, 39-45, 47, 48, 51-55, 57-60, and 65-71 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

With respect to claims 1-7, 9, 10, 13-17, 19-22, and 27-33, the Office Action asserts that the claims do not satisfy the requirements of 35 U.S.C. § 101 because “the steps are neither tied to a particular machine or apparatus nor transform[] a particular article to a different state or thing. The applicant needs to add structure to the . . .claims.” Non-final Office Action of September 8, 2009 at page 3, lines 6-9. Without conceding the propriety of this rejection, but rather to advance prosecution, applicants have amended independent claims 1, 22, and 31 as suggested by the Office Action. Accordingly, applicants request reconsideration and withdrawal of the rejection of claims 1-7, 9, 10, 13-17, 19-22, and 27-33.

With respect to claims 39-45, 47, 48, 51-55, 57-60, and 65-71, the Office Action asserts that the claims do not satisfy the requirements of 35 U.S.C. § 101 because “the claims are defined as computer product claims however, it is not clear that they are referring to a computer readable medium and that instructions stored in said medium are executed by a processor.” Non-final Office Action of September 8, 2009 at page 3, lines 9-12. Without conceding the propriety of this rejection, but rather to advance prosecution, applicants have amended independent claims 39, 60, and 69 to recite computer-readable media storing instructions that, when executed by a processor, cause the processor to perform various different acts. Accordingly, applicants request reconsideration and withdrawal of the rejection of claims 39-45, 47, 48, 51-55, 57-60, and 65-71.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claims 1, 22, 31, 39, 60, and 69 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Specifically, the Office Action notes that claims 1, 22, 31, 39, 60, and 69 “recite an ‘adjustment factor’. The Examiner is reading said limitation as simply adjusting a user’s preference information based upon said user’s answers to trade off questions and average value of subgroup preference information.” Non-final Office Action of September 8, 2009 at page 3, lines 20-23.

Based on the comments provided in the Office Action in connection with the rejection under 35 U.S.C. § 112, second paragraph and excerpted above, applicants are unsure whether the Examiner has rejected claims 1, 22, 31, 39, 60, and 69 on the grounds that the term “adjustment factor” is indefinite or if, instead, the Examiner is setting forth his construction of the term “adjustment factor.” Whatever the case may be, applicants submit that the term “adjustment factor” is not indefinite and further that the Examiner’s construction of the term “adjustment factor” is not correct.

This is all irrelevant, however, because applicants have amended independent claims 1, 22, 31, 39, 60, and 69 to recite adjustment ratios that specify proportions in which values that are reflective of consumers’ preferences for at least one attribute level and average values of consumer sub-group’s preferences for the at least one attribute level are to be combined in place

of the previously recited adjustment factors. Accordingly, applicants request reconsideration and withdrawal of the rejection of claims 1, 22, 31, 39, 60, and 69.

### **Claim Rejections Under 35 U.S.C. § 103**

Claims 1-7, 9, 10, 13-17, 19-22, 27-33, 39-45, 47, 48, 51-55, 57-60, and 65-71 have been rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of U.S. Patent No. 6,826,541 (Johnston) and U.S. Patent No. 6,029,195 (Herz). Applicants have amended independent claims 1, 22, 31, 39, 60, and 69 and request reconsideration and withdrawal of the rejection of claims 1-7, 9, 10, 13-17, 19-22, 27-33, 39-45, 47, 48, 51-55, 57-60, and 65-71 at least because Johnston and Herz, when taken alone or in combination, do not describe or suggest all of the features recited in each of amended independent claims 1, 22, 31, 39, 60, and 69.

#### Claims 1-7, 9, 10, 13-17, 19-21, 39-45, 47, 48, 51-55, and 57-59

As amended, independent claim 1 recites a method that includes, among other features selecting a first sub-group of consumers from among multiple sub-groups of consumers as a match for a first consumer based on having determined that preference information stored for the first consumer is similar to preference information stored for constituent members of the first sub-group of consumers. In addition, the method includes determining a first adjustment ratio for use in adjusting a stored value that is reflective of the first consumer's preference for at least one attribute that specifies proportions in which the stored value that is reflective of the first consumer's preference for the at least one attribute level and an average value of the first sub-group's preference for the at least one attribute level are to be combined, and adjusting the stored value that is reflective of the first consumer's preference for the at least one attribute level by combining the stored value that is reflective of the first consumer's preference for the at least one attribute level with the average value of the first sub-group's preference for the at least one attribute level in the proportions specified by the first adjustment ratio.

In rejecting independent claim 1, the Office Action acknowledges that Johnston fails to describe or suggest adjusting a stored value that is reflective of a first consumer's preference for

at least one attribute level as a function of a determined first adjustment factor and an average value of a first sub-group's preference for the at least one attribute level. *See* non-final Office Action of September 8, 2009 at page 6, lines 19-22. It follows, therefore, that Johnston also fails to describe or suggest adjusting a stored value that is reflective of a first consumer's preference for at least one attribute level by combining the stored value that is reflective of the first consumer's preference for the at least one attribute level with an average value of the first sub-group's preference for the at least one attribute level in proportions for the stored value that is reflective of the first consumer's preference for the at least one attribute level and the average value of the first sub-group's preference for the at least one attribute level specified by a first adjustment ratio, as now recited in independent claim 1.

As described in greater detail below, Herz is similarly deficient. In support of the position that Herz teaches adjusting a stored value that is reflective of a first consumer's preference for at least one attribute level as a function of a determined first adjustment factor and an average value of a first sub-group's preference for the at least one attribute level, the Office Action argues that Herz teaches:

calculating the average of the subgroup profile (see col 24, lines 15-25) and using said average to update the particular user's profile in order to predict that said particular user preference would resemble the known preferences of other users with similar profile[s] (see col 28, lines 1-67).

Non-final Office Action of September 8, 2009 at page 7, lines 10-13.

Notably, however, Herz does not describe or suggest, either in the passages on which the Office Action relies or elsewhere, adjusting a stored value that is reflective of a first consumer's preference for at least one attribute level by combining the stored value that is reflective of the first consumer's preference for the at least one attribute level with an average value of the first sub-group's preference for the at least one attribute level in proportions specified by a first adjustment ratio, as recited in independent claim 1.

The passage of Herz on which the Office Action relies for teaching "calculating [an] average of [a] subgroup profile" describes techniques for grouping target objects into clusters such that similar target objects are grouped into the same clusters. *See, e.g.,* Herz at col. 24, lines

9-39. In addition, the passage of Herz on which the Office Action relies for teaching “using [the] average [of the subgroup profile] in order to predict that said particular user preference would resemble the known preferences of other users with similar profiles” describes that user interests for a user for whom a partial user interest profile already has been established can be predicted to resemble those of other users having profiles that are similar to the user’s partially established user profile. *See, e.g.*, Herz at col. 27, line 59 to col. 29, line 3. There is not, however, any discussion in these passages of Herz or elsewhere in Herz of adjusting a stored value that is reflective of a first consumer’s preference for at least one attribute level by combining the stored value that is reflective of the first consumer’s preference for the at least one attribute level with an average value of the first sub-group’s preference for the at least one attribute level in proportions specified by a first adjustment ratio, as recited in independent claim 1.

Accordingly, applicants request reconsideration and withdrawal of the rejection of independent claim 1 and dependent claims 2-7, 9, 10, 13-17, and 19-21, which depend from independent claim 1. As amended, independent claim 39 recites features that are similar to the features discussed above in connection with independent claim 1 and does so in the context of a computer-readable medium. Accordingly, for at least the reasons discussed above in connection with independent claim 1, applicants request reconsideration and withdrawal of the rejection of independent claim 39 and dependent claims 40-45, 47, 48, 51-55, and 57-59, which depend from independent claim 39.

Claims 22, 27-30, 60, and 65-68

As amended, independent claim 22 recites a method that includes, among other features, adjusting a stored value that is reflective of a particular consumer’s preference for at least one attribute level by combining the stored value that is reflective of the particular consumer’s preference for the at least one attribute level with an average value of a particular sub-group’s preference for the at least one attribute level in proportions specified by an adjustment ratio. For reasons that are analogous to those discussed above in connection with independent claim 1,

Johnston and Herz, when taken alone or in combination, do not describe or suggest these features of independent claim 22.

Accordingly, applicants request reconsideration and withdrawal of the rejection of independent claim 22 and dependent claims 27-30, which depend from independent claim 22. As amended, independent claim 60 recites features that are similar to the features discussed above in connection with independent claim 22 and does so in the context of a computer-readable medium. Accordingly, for at least the reasons discussed above in connection with independent claim 22, applicants request reconsideration and withdrawal of the rejection of independent claim 60 and dependent claims 65-68, which depend from independent claim 60.

Claims 31-33 and 69-71

As amended, independent claim 31 recites a method that includes, among other features, adjusting a stored currency-normalized value that is reflective of a particular consumer's currency-normalized preference for at least one attribute level by combining the currency-normalized stored value that is reflective of the particular consumer's currency-normalized preference for the at least one attribute level with an average value of the particular sub-group's currency-normalized preference for the at least one attribute level in proportions specified by the adjustment ratio. For reasons that are analogous to those discussed above in connection with independent claim 1, Johnston and Herz, when taken alone or in combination, do not describe or suggest these features of independent claim 31. Accordingly, applicants request reconsideration and withdrawal of the rejection of independent claim 31 and dependent claims 32 and 33, which depend from independent claim 31.

As amended, independent claim 69 recites features that are similar to the features discussed above in connection with independent claim 31 and does so in the context of a computer-readable medium. Accordingly, for at least the reasons discussed above in connection with independent claim 31, applicants request reconsideration and withdrawal of the rejection of independent claim 69 and dependent claims 70 and 71, which depend from independent claim 69.

## Conclusion

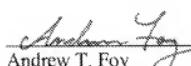
Applicants submit that all claims are in condition for allowance.

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

The fee in the amount of \$65 for the Petition for One-month Extension of Time is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits due in connection with the filing of this Amendment or otherwise to Deposit Account No. 06-1050.

Respectfully submitted,

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